BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DION GROVES	)	
Claimant	)	
V.	)	
	)	Docket No. 1,057,497
GUNZE PLASTICS & ENGINEERING CORP.	)	
OF AMERICA	)	
Respondent	)	
AND	)	
	)	
UNITED WISCONSIN INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the September 11, 2014, Award by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on January 13, 2015, in Lenexa, Kansas.

APPEARANCES

Zachary A. Kolich, of Shawnee Mission, Kansas, appeared for the claimant. Brandon A. Lawson, of Kansas City, Missouri, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant has a psychological injury directly traceable to the back injury, both of which arose out of and in the course of his employment and claimant is completely and permanently incapable of substantial and gainful employment due to limitations from both the back and psychological injuries.

Respondent appeals arguing claimant is not totally disabled and sustained only a 13 percent impairment to the body as a whole from the August 4, 2011, work injury.

Claimant argues the Award should be affirmed.

The issue on appeal is the nature and extent of claimant's impairment and disability.

FINDINGS OF FACT

Claimant worked for respondent for approximately three years. The majority of claimant's jobs have been manual labor. Claimant did take classes at Kansas City, Kansas Community College and is three credits short of a Computer Sciences Degree. He has not looked for work in the computer science field because the information he learned is now outdated. Claimant stopped taking classes in 2003.

Claimant testified that on August 4, 2011, he was lifting boxes weighing 30 to 90 pounds, heard a pop and felt pain in his back that traveled down his left leg. Claimant reported the injury and went to see Carlos Palmeri, M.D., his family physician. Claimant was given medication and sent for x-rays. When claimant spoke with respondent about treatment with a doctor through workers compensation, he was sent to Concentra on August 23, 2011.

Claimant met with Girma Assefa, M.D., on August 23, 2011, at Concentra. Claimant reported no history of prior back problems. His pain was a 7 out of 10. His symptoms were aggravated by massage, bending, lifting, manipulation and movement. He was evaluated and diagnosed with back pain and a lumbosacral strain. Claimant was advised to continue with his prescribed medications, given a Toradol injection and scheduled for physical therapy 3 times a week for two weeks. He was assigned restrictions of no lifting over 5 pounds, no bending more than 6 times per hour and no pushing or pulling with over 10 pounds of force.

Claimant returned to Dr. Assefa on August 26, 2011, September 2, 2011, September 9, 2011, September 16, 2011, September 23, 2011 and September 29, 2011. On August 26 and September 9, claimant was seen by nurse practitioner, Genevieve Adams. On the other dates claimant was examined by Dr. Assefa. Claimant's symptoms and diagnoses remained consistent.

At the request of his attorney, claimant met with board certified orthopedic surgeon Edward Prostic, M.D., on October 5, 2011, with complaints of pain in the center and left side of his low back above the waist with radiation to his posterior left thigh and numbness and tingling to the anterior thighs. Claimant has difficulty when he wakes up and is worse with sitting, bending, squatting, twisting, lifting, pushing, pulling, coughing and sneezing.

Dr. Prostic examined claimant and found him to have midline tenderness of his low back and poor range of motion. Claimant had normal alignment but questionable disc space narrowing at L5-S1. Neurologically claimant's examination was within normal limits. Dr. Prostic opined claimant sustained injury to his low back during the course of his employment on August 4, 2011, and that the injury was most likely an annular tear or small protrusion of a lumbar disc. He recommended claimant continue with his medication and physical therapy. Dr. Prostic found claimant temporarily unable to return to work and opined the accident was the prevailing factor causing the injury and need for treatment.

Claimant was referred to William Reed, M.D., and given medication and epidural injections. Ultimately, surgery was recommended.

Claimant met with board certified orthopedic surgeon, John M. Ciccarelli, M.D., on January 19, 2012, for a second opinion regarding a potential decompression and fusion at L5-S1 as recommended by Dr. Reed. Claimant complained primarily of sharp pain in his back, pain that radiated down both legs with the left worse, and numbness and weakness in calf muscles on the left side. Dr. Ciccarelli wrote the pain could be described as a classic S1 type distribution around the posterolateral calf and into the sole of the foot, pain that radiated into the bilateral groin, pain across the anterior shin on the left and into the top of the foot, chronic numbness in the left leg and difficulty with single stance toe raise on the left calf. Claimant was not working at the time of this visit because his restrictions could not be accommodated.

Dr. Ciccarelli opined claimant suffered a two level disc herniation at L4-5 and L5-S1 with lateral recess stenosis corresponding to his symptoms. Claimant was given two options: target the primary radicular component at L5-S1 with decompression at L5-S1 and L4-5, or undergo a fusion at three levels because fusion at L5-S1 over a stenotic level would likely require extension of the fusion in the future. Dr. Ciccarelli noted claimant was not interested in fusion surgery and the doctor would not recommend it. He opined ongoing conservative treatment was claimant's best option. Dr. Ciccarelli did not guarantee conservative treatment would relieve claimant's back discomfort. Dr. Ciccarelli felt decompression was claimant's best surgical option to try and could provide some relief of claimant's leg symptoms.

On February 20, 2012, Dr. Ciccarelli performed the following on claimant: bilateral partial laminectomy, L4; additional level partial laminectomy, L5; additional bilateral laminectomy, S1; bilateral lateral recess decompression, L4-5; bilateral recess decompression, L5-S1; lumbar diskectomy, L4-5 and lumbar diskectomy, L5-S1. He expected claimant to be fully released without restrictions after 12 weeks.

Claimant was seen on March 8, 2012, for a postoperative visit with Amy Sclesky, PA. He was doing well with some resolution of left lower extremity radiculopathy and less incisional pain. He did have quite a bit of postoperative pain and was given OxyContin and Percocet. These prescriptions were refilled and claimant was instructed to stay off work.

On April 12, 2012, when claimant met with Dr. Ciccarelli, he reported continued soreness in his back, which was expected, and some aching in his leg. Dr. Ciccarelli wrote claimant was continuing to heal and was progressing well. Claimant was allowed to return to light duty if available, with restrictions of no lifting over 20 pounds, avoid repetitive bending and lifting, alternate sitting and standing each hour as needed, avoid using heavy machinery and work no more than an 8 hour day. He also started claimant with physical therapy.

On May 24, 2012, claimant continued to complain of considerable soreness in his back paraspinously, which was normal, but his level of pain and continued radicular complaints in his legs were cause for concern. Dr. Ciccarelli ordered an updated MRI with and without contrast to rule out a herniation and/or stenosis. Claimant was to continue with restrictions pending the MRI results. Dr. Ciccarelli indicated, should the MRI come back clear, he would most likely release claimant without permanent restrictions. In the meantime, claimant was to continue with the restrictions from April.

On June 12, 2012, claimant returned to Dr. Ciccarelli for review of the MRI. Claimant displayed some myofascial tightness and occasional tingling symptoms and burning into the leg. The MRI was negative for any residual stenosis. A final series of physical therapy sessions, with a focus on conditioning the back, were recommended. Claimant was allowed to return to 12 hour work days with restrictions, if available.

On July 10, 2012, claimant returned to Dr. Ciccarelli and reported some improvement. His main complaint was myofascial back pain and axial type pains (centrally located back pain). He reported therapy helped, but was discontinued. Dr. Ciccarelli was close to the limits of what he could offer claimant. He recommended 4 final weeks of therapy. He left the decision up to claimant about whether he wanted to stay with his job or not. He again wrote he could not recommend fusion surgery, but felt claimant should have a second surgical opinion. Claimant was to continue with his restrictions at least for the duration of his therapy despite the doctor feeling restrictions weren't going to help claimant, based on his experience in orthopedics.

On August 7, 2012, claimant continued to complain of very diffuse numbness and tingling and diffuse weakness in his legs that did not follow any specific pattern. He continued to have axial back pain. It was Dr. Ciccarelli's opinion that the lateral recesses had been decompressed. He opined claimant had ongoing low back pain despite radiographic successful decompression at L4-5 and L5-S1. He had nothing else to offer claimant and again suggested another surgical opinion. He felt an FCE and physiatry were claimant's only other options versus considering a home TENS unit which provided claimant with some relief. Dr. Ciccarelli found claimant to be at maximum medical improvement with respect to his lumbar discectomy. He had no permanent restrictions to recommend. Dr. Ciccarelli did not think there was a restriction that would prevent claimant from having new injuries or issues with his back.

As of August 23, 2012, claimant had not chosen to pursue a second surgical opinion, which, according to Dr. Ciccarelli, put claimant at maximum medical improvement with a 13 percent permanent partial impairment to the body as a whole, secondary due to his two level decompression discectomy, based upon the 4th Edition of the *Guides*.[1]

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[1] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

Dr. Ciccarelli testified that, from the task list compiled by Michael Dreiling, claimant could not perform 5 out of 8 tasks under his restrictions for a 62.5 percent task loss. He did not feel claimant's injuries and treatment affected claimant's ability to earn wages.

Throughout his post surgery recovery, claimant showed significant improvement with the leg pain, numbness and weakness. He had the normal expected initial back pain and soreness following the surgery and never regretted the procedure as far as improvement of his nerve pain. He complained of ongoing chronic back pain at his follow-up visits.

Claimant met with vocational consultant Michael J. Dreiling, on October 17, 2012, for a vocational assessment. Mr. Dreiling testified that, based on the available medical records, claimant had no significant preexisting permanent medical restrictions or disabilities that interfered with his ability to perform the work for five years prior to his work injury. With claimant's input, Mr. Dreiling created a task list comprised of 8 separate tasks.

Mr. Dreiling indicated claimant reported he was still having back problems and pain, with sitting and standing limited to 20 minutes at a time. He testified claimant reported never being provided with a TENS unit. Claimant was taking Cymbalta and receiving treatment for emotional problems.

Mr. Dreiling documented in his November 19, 2012, report that imputing entry-level work was a realistic option in terms of claimant's ability to obtain employment in the open labor market. However, he also anticipated claimant would have difficulty finding employment he is capable of performing in the open labor market. He determined, with minimum wage being $7.25 an hour and comparing it to claimant's preinjury wage of $13 an hour, there would be a 44 percent wage loss. Entry-level work is not going to provide claimant with health insurance benefits, which claimant had during his employment with respondent. In his June 23, 2014, report, Mr. Dreiling found claimant unable to perform competitive employment in the open labor market. This determination was reached after Mr. Dreiling reviewed the reports and restrictions of Dr. Prostic, Dr. Pratt and Dr. Ibarra. It was Mr. Dreiling's opinion claimant was essentially and realistically unemployable.

Claimant met with Steven Hendler, M.D., on April 22, 2013, for an examination at the request of respondent's attorney.[2] Claimant reported his pain had never improved from the initial injury. After the injury, claimant had numbness in his left leg, the lower half of his body felt paralyzed where he couldn't feel his right leg, he had persistent shooting pain in the left leg, aching and stabbing pain in the low back and aching in the mid-back and buttock. Dr. Hendler noted bending currently caused claimant a dull pain. But, prior to surgery, bending caused claimant a sharp shooting pain down his leg.

[2] Dr. Hendler did not testify but his report was included in Exhibit No. 2 to the Young deposition.

Claimant reported suffering from depression shortly after the injury, but denied suffering from depression before the injury. Claimant has not worked since the injury. Dr. Hendler examined claimant and diagnosed disk disease at L4-5 and L5-1, status post decompression on 2/20/12, myofascial pain and neuropathic pain.

Dr. Hendler noted claimant has findings consistent with discogenic disease, related to the events that also led to the need for back surgery and the need for further treatment. He felt the use of muscle relaxers, neuromodulators and anti-inflammatory medication would be appropriate treatment, but opioids should be avoided. He went on to opine that because claimant's symptoms have progressed, he did not believe claimant would likely benefit from additional therapy or other interventional approaches to pain management.

Claimant met with Guillermo Ibarra, M.D., for a court-ordered psychiatric evaluation, on February 22, 2014. Dr. Ibarra is board certified in psychiatry and neurology. Claimant reported continued complaints of depression, crying spells, feelings of hopelessness, lack of drive and motivation, sleep disturbances and appetite changes with significant weight gain, loss of self esteem, pervasive sadness, anxiety, panic attacks, pain in his lower back affecting his gait, standing, motion and posture, and an inability to stand/walk for sit for extended periods due to pain. This limited him to sedentary activities which would be difficult due to his need to change positions every 15 to 20 minutes.

Dr. Ibarra diagnosed claimant with Adjustment Disorder[3] with Depressive Mood. Dr. Ibarra found no evidence of oddities of thought or behavior. Claimant's anxiety was evident from the outset with somewhat pressured speech and frequent sighing. Claimant's mood was sad at times and he often became tearful. Dr. Ibarra found evidence of distress when talking about claimant's predicaments. Claimant admitted to suicidal ideation without intent or plan. He denied any ill intentions towards anyone.

Dr. Ibarra opined claimant's psychological condition is directly attributable to the injuries and chronic pain he sustained in the August 4, 2011, work-related accident. The accident is the prevailing factor causing claimant's psychological condition. The doctor opined that despite conservative and surgical treatments claimant remains symptomatic, with chronic pain and depression being the prevalent features. Dr. Ibarra noted that changes post accident left claimant unable to work and unable to support himself. Dr. Ibarra opined the evidence supports the notion claimant has been depressed since at least September 2011. In his notes he identified psychiatrist, Dr. Chester Day, at the Wyandotte Center, as diagnosing claimant with Major Depression when first meeting with claimant on

[3] An Adjustment Disorder is the result of an introduction of a stressor, which in claimant's case is his back injury and everything associated with it. The disorder is supposed to dissipate or resolve when the stressor is removed.

October 3, 2011.[4] Dr. Ibarra testified that claimant's inability to adjust to his new lack of ability to physically do a lot of activities has had an impact on claimant's mental state.

Dr. Ibarra identified claimant as being able to understand, retain and carry out simple and complex tasks; with marked limitations in his ability to sustain attention, concentration and activity for extended periods; has marked limitations in his ability to adapt emotionally to changes and to tolerate normal pressures of competitive employment; has marked limitations in his ability to remain employed without interruptions from psychological problems and without special supervision or considerations, but he is aware of normal hazards and looks well after his safety most of the time. Dr. Ibarra found claimant to have a 25 percent whole person functional impairment. Dr. Ibarra came to this impairment using the 2nd and 4th Editions of the AMA *Guides*. The 2nd Edition was utilized because it was the last edition to use percentages with respect to psychiatric or mental health impairment.[5]

Claimant met with Terrence Pratt, M.D., for a court ordered IME, on April 14, 2014. Claimant complained of low back pain and an inability to bend. He also had various other complaints involving his lower extremities.

In summary, claimant reported low back pain with radicular symptoms related to his August 4, 2011, work activities. He had temporary relief with epidural injections and has residual symptoms post surgery. Dr. Pratt opined claimant had a history of herniated nucleus pulposus L4-5 and L5-S1; status post partial laminectomies and diskectomy with decompression at L4-5 and L5-S1; history of depression; and inappropriate responses on the examination.

Using the 4th Edition of the *Guides* Dr. Pratt assigned claimant a 15 percent permanent partial impairment to the whole body. He assigned permanent work restrictions of no frequent low back bending or twisting, no lifting in excess of 25 pounds occasionally, no pushing and pulling in excess of 50 pounds occasionally. Dr. Pratt provided an addendum to his report on July 17, 2014, in which he found claimant to have a 50 percent task loss, having lost the ability to perform 4 out of 8 tasks.

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[4] Ibarra Depo., Ex. 1 at 2.

[5] The Board rejects respondent's argument that because mental health conditions are not assigned impairment ratings in the 4th Edition of the *Guides*, claimant's mental health condition is not ratable. The 4th Edition does not give percentage impairment for classes of impairment. A health care provider may properly rate a condition based on his or her judgement where the condition is not accounted for in the *Guides*. See K.S.A. 44-510e: *Smith v. Sophie's Catering & Deli, Inc.*, No. 99,713, 202 P.3d 108 (Kansas Court of Appeals unpublished opinion filed Mar. 6, 2009), publication denied Nov. 5, 2010, and *Kinser v. Topeka Tree Care, Inc.*, No. 1,014,332, WL 2632002 (Kan. WCAB Aug. 1, 2006). Due to the fact that the 4th Edition of the *Guides* contains no numerical figures for psychological impairment, it is proper for claimant's impairment to be based on the 2nd Edition. See *Harrah v. Coffeyville Regional Medical Center*, No. 1,002,341, 2009 WL 1588597 (Kan. WCAB May 26, 2009); *Kinser*, supra; *Bradford v. Manhattan Mercury/Seaton Publishing Co.*, No. 210,583, 2000 WL 973232 (Kan. WCAB June 19, 2000).

Dr. Prostic met with claimant again on June 17, 2014, at which time it continued to be his opinion that claimant sustained injury to the low back during the course of his employment on August 4, 2011. He had a poor response to a two-level discectomy, had postoperative epidural fibrosis and postoperative psychological decompression. Claimant continued to have poor range of motion. Dr. Prostic opined additional orthopedic care is unlikely to be beneficial, and claimant's recovery is impeded by psychological barriers. Claimant was able to return to work on light duty only with the ability to change position as necessary for comfort.

Dr. Prostic assigned claimant a 20 percent permanent partial impairment to the body as a whole for claimant's orthopedic issues, using the 4th Edition of the *Guides*. He found claimant was not capable of more than light duty employment and should avoid frequent bending or twisting at the waist, forceful pushing or pulling and no more than minimal use of vibrating equipment or captive positioning. He went on to find that these restrictions, combined with a combination of psychological factors and claimant's training, education and experience, leave claimant most likely totally disabled from gainful employment. He found the accident was the prevailing factor in the injury, need for treatment and the resulting impairment. Dr. Prostic believed the treatment claimant is receiving is necessary to cure and relieve the effects of his low back injury. He indicated future medical treatment with a licensed professional will be required as a result of the work injury.

Dr. Prostic was aware claimant was given restrictions by Dr. Ciccarelli that left him temporarily and totally disabled and unable to return to work for respondent or to any other substantial and gainful employment. Dr. Prostic opined there is no proof that restrictions would help claimant avoid reherniation or reinjury. He testified when they first met, claimant was significantly deconditioned and susceptible to recurrent injuries to the low back. Should claimant get fully reconditioned the restrictions would lessen, but, unless claimant's psychological factors are controlled, claimant will not be able to do more than light duty employment. Dr. Prostic opined claimant's restrictions should be considered permanent unless claimant has a good response to psychological treatment and physiological retraining. However, claimant's odds were poor because claimant was two years post surgery.

Dr. Prostic found claimant to have an 88 percent task loss, having lost the ability to perform 7 out of 8 tasks. Based on the addendum report of Michael Dreiling, Dr. Prostic ultimately determined claimant was realistically unemployable in the open labor market. He felt claimant was permanently and totally disabled as a result of the August 4, 2011, work-related low back injury.

Jennifer Young, HR manager for respondent, testified she has been employed by the company for five years and has been in her current position for the last two years. Ms. Young testified that at the time of injury, claimant was making $13.13 an hour. Claimant was considered a full-time employee, whose employment began on October 19, 2009. Claimant's employment was terminated on August 7, 2012.

Claimant is receiving treatment with Dr. Hendler in the form of medications and a TENS unit. Claimant's current problems with his back are spasms, pain, weakness, problems sitting and standing for a long time and problems sleeping. He cannot bend and has sharp pain shooting down his left leg, with weakness and shooting pain down into his foot. On his right side, claimant's problems do not go past the top of his hip. Claimant continues seeing Dr. Day for emotional problems. Dr. Day provides claimant with medication, counseling, pain therapy and group therapy.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 44-501b(b)(c) states:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(d) states:

> (d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

K.S.A. 2011 Supp. 44-508(f) states in part:

> (f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.
> (2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.
> . . .
> (B) An injury by accident shall be deemed to arise out of employment only if:
> (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
> (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

> (3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:
> (i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;
> (ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;
> (iii) accident or injury which arose out of a risk personal to the worker; or
> (iv) accident or injury which arose either directly or indirectly from idiopathic causes.

K.S.A. 2011 Supp. 44-508(u) states:

> (u) "Functional impairment" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of impairment, if the impairment is contained therein.

Claimant suffered a work-related accident resulting in permanent injury on August 4, 2011. As the result of that accident claimant has a functional whole person impairment of 16 percent. This is based upon the opinions of Dr. Ciccarelli, Dr. Prostic and Dr. Pratt.

The more serious dispute centers around claimant's allegations of a psychological injury from this accident. The only psychiatrist to express an opinion on this issue is Dr. Ibarra. He rated claimant at 25 percent to the whole person, based upon the 2nd Edition of the *Guides*, as the 4th Edition contains no such rating system for psychological injuries. Dr. Ibarra found claimant's work-related accident and resulting chronic pain to be the primary or prevailing factor causing claimant's psychological condition. The Kansas Court of Appeals, in *Love*[6]*,* found traumatic neurosis to be compensable "*only* if it is shown the neurosis is directly traceable to the physical injury."

Mr. Dreiling, after reviewing the findings and opinions of Dr. Pratt, Dr. Prostic and Dr. Ibarra, found claimant to be permanently and totally disabled. Dr. Prostic supported this opinion with his own finding that claimant was permanently and totally disabled. An employee is permanently and totally disabled when rendered "essentially and realistically unemployable."[7]

There are no medical or psychological opinions in this record contradicting the opinions of Dr. Prostic and Dr. Ibarra.[8] The Board finds claimant has satisfied his burden

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[6] *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, *rev. denied,* 245 Kan. 784, (1989).

[7] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

[8] *Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

of proving he has suffered permanent physical injury which has caused the psychological problems claimant has experienced since the accident. Claimant is incapable of being realistically employed directly as the result of the accident, resulting injuries, and further resulting psychological impairment. The Award of the ALJ finding claimant permanently and totally disabled is affirmed.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated September 11, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2015.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

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Kenneth J. Hursh, Administrative Law Judge